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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1992

Robert Wayne Bouvier, Petitioner

vs.

United States of America, Respondent

REPLY BRIEF OF ROBERT WAYNE BOUVIER TO BRIEF FOR THE UNITED STATES IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

NO. 92-5257

IN THE

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October Term, 1992

Robert Wayne Bouvier, Petitioner

vs.

United States of America, Respondent

Respectfully submitted,

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SERVICE TO:

Solicitor General
Department of Justice
Washington, D.C. 20530
July 22, 1992

QUESTION PRESENTED:

WHETHER THE WEIGHT OF TOXIC WASTE MATERIAL, WHICH IS THE BYPRODUCT OF A DRUG MANUFACTURING PROCESS, SHOULD BE INCLUDED IN THE CALCULATION OF A DEFENDANT'S BASE OFFENSE LEVEL UNDER FEDERAL SENTENCING GUIDELINES § 2D1.1.

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**REPLY BRIEF OF ROBERT WAYNE BOUVIER
TO BRIEF FOR THE UNITED STATES IN OPPOSITION TO
PETITION FOR WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT**

Robert Bouvier respectfully files this his Reply Brief To Brief For The United States In Opposition To Petition For Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit.

ARGUMENT FOR ALLOWANCE OF WRIT

The United States in its Brief in Opposition to this Writ admits that there is a split of authority among the circuits as to the calculation of drug amount to determine a defendant's base offense level under the Federal Sentencing Guidelines. Although the Government has interpreted the decision of this Court in Chapman v. United States, 111 S.Ct. 1919 (1991) to be consistent with its position, the Second, Sixth, Ninth and Eleventh Circuits have all considered and rejected the position now taken by the Government.[1] To accept the argument of the Government and deny certiorari would serve only to perpetuate a system in which the length of the sentence imposed upon a person accused of a violation of controlled substance laws would vary widely depending upon the Circuit in which he was charged. The position of the Government would further frustrate the objective of Congress in enacting the Sentencing Reform Act of 1984 to impose reasonable uniformity in sentencing by narrowing the wide disparity of sentences imposed for similar offenses by similar offenders.

Movant further takes exception to Footnote 2 of the Brief For The United States In Opposition regarding Mr. Bouvier's proper base offense level under the Sentencing Guidelines. Apparently, the Government requests this Court assume that the one hundred forty-six (146) grams of methamphetamine seized was "actual" (a word not used in the Drug Quantity Table) or "pure" methamphetamine. The Government has no evidence to suggest anything to support their assertion concerning the quality of the methamphetamine seized. Obviously, a consideration of the quality of methamphetamine for sentencing purposes would be a factual question for consideration by the trial court and has no relevance to this Court's consideration of this petition. In truth, the proper application of drug amount to base offense level in Mr. Bouvier case would

[1] United States v. Acosta, 963 F.2d 551 (2nd Cir. 1992); United States v. Touby, 909 F.2d 759 (3rd Cir.), aff'd on other grounds, 111 S. Ct 1752 (1991); United States v. Jennings, 945 F.2d 129 (6th Cir. 1991); United States v. Rolande-Gabriel 938 F.2d 1231 (11th Cir. 1991).

result in an offense level of 26 and not 32 as asserted by the Government.

CONCLUSION

The petition should be granted in this case to correct the Fifth Circuit's misinterpretation of the Federal Sentencing Guidelines and to settle the discrepancy among the circuit courts concerning sentencing for controlled substance offenses.

Respectfully submitted,

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PROOF OF SERVICE

The undersigned counsel of record for Petitioner Robert Wayne Bouvier hereby certifies that on this the 12th day of October 1992, true and correct copies of the foregoing Reply Brief To Brief For The United States In Opposition To Petition For Writ Of Certiorari To The United States Court of Appeals For the Fifth Circuit have been served by depositing the same in a United States Office or mailbox, with first class postage prepaid, addressed to counsel of record of all parties required to be served, at their proper post offices addresses as follows:

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